IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No.3 of 1994

For Approval and Signature:
HON'BLE MR.JUSTICE D.A.MEHTA Sd/-

HON'BLE MS.JUSTICE H.N.DEVANI Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME TAX - Applicant(s)
Versus
SATISHBHAI B SHAH - Respondent(s)

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Appearance :
MR MANISH R BHATT for Applicant No(s).: 1.
NOTICE SERVED for Respondent No(s).: 1.

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CORAM : HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI

Date : 11/08/2005

ORAL JUDGMENT
(Per : HON'BLE MR.JUSTICE D.A.MEHTA)

1. The following question has been referred under Section 256(1) of the Income-tax Act, 1961 (the Act) by the Income-tax Appellate Tribunal, Ahmedabad

Bench 'C', at the instance of the Commissioner of Income-tax:

> “Whether, the Appellate Tribunal is right in law and on facts in deleting the addition made by the Assessing Officer in respect of the income of the three trusts on the ground that these trusts were nothing but conduit for the ultimate benefit of the assessee and his family members ?”

2. The Assessment Years are 1985-86, 1986-87 and 1987-88. In the case of the assessee individual the Assessing Officer made addition of incomes shown by three trusts, namely, (i) Harish (HE) Trust; (ii) Mahavir SBS Trust; and (iii) Rajesh (RE) Trust on the ground that the income in question was really earned by the assessee and was wrongly shown as having been earned by the three trusts. The assessee failed in the First Appeals before the CIT (Appeals).

3. When the matter was carried in Second Appeals before the Tribunal, it was recorded by the Tribunal that it had already held for Assessment Years 1982-83 and 1983-84, as well as for the three years under

consideration, in the hands of all the three trusts, that the said three trusts being discretionary trusts were liable to be taxed at the maximum marginal rate.

4. While making the reference the Tribunal has stated that it had already made reference in the case of trusts also.

5. Mr.M.R.Bhatt, learned Senior Standing Counsel appearing on behalf of the applicant – Revenue, has invited attention to the orders made by this Court in ITR No.198 of 1992 on 03.12.2003, ITR No.197 of 1992 on 23.02.2004, ITR No.85 of 1993 on 23.02.2004 and ITR No.190 of 1993 on 23.02.2004 to point out that in case of the trusts, the Tribunal's orders have attained finality as the references, at the instance of the assessee trusts, have not been pressed by the respective assessees.

6. Though served there is no appearance on behalf of the respondent – assessee in the present reference.

7. In light of aforesaid facts, once the very same

income for the self same Assessment Years has been brought to tax in hands of the trusts at the maximum marginal rate, there would be no question of taxing the same income once again in hands of the assessee. The Tribunal was right in deleting the additions in respect of the incomes shown in the hands of the assessee on the ground that in the cases of the trusts the Tribunal had already held that the trusts were discretionary and liable to be taxed at the maximum marginal rate.

8. The question referred is, accordingly, answered in the affirmative i.e. in favour of the assessee and against the Revenue.

9. The reference stands disposed of accordingly. There shall be no order as to costs.

Sd/-
[D.A. MEHTA, J]

Sd/-
[H.N. DEVANI, J]

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*Bhavesh**